

Message Text

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C O N F I D E N T I A L SECTION 01 OF 03 OECD PARIS 06396

PASS: EB FOR BOEKER, L FOR FELDMAN, TREAS. FOR LANGE

E.O. 11652: GDF

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SUBJECT: COMMITTEE ON INTERNATIONAL INVESTMENT AND
MULTINATIONAL ENTERPRISES (CIME): HOW TO WRAP UP THE
PACKAGE.

REF: (A) OECD PARIS 5022, (B) OECD PARIS 3095, (C)
STATE 35148, (D) STATE 33911

1. INTRODUCTION AND SUMMARY: THE OECD INVESTMENT
EXERCISE IS ABOUT TO REACH THE HOMESTRETCH. A GREAT
DEAL OF WORK MUST STILL BE DONE AND, EFFECTIVELY, ONLY
A FEW WEEKS REMAIN TO ACCOMPLISH IT, IF THE INVESTMENT
PACKAGE IS TO BE SUCCESSFULLY NEGOTIATED AND READY FOR
ADOPTION BY THE OECD MINISTERIAL IN JUNE. THIS MESSAGE
DISCUSSES SOME OF THE DIFFICULTIES THAT LIE ON THE WAY
TO THIS OBJECTIVE AND SUGGESTS POSSIBLE APPROACHES FOR
RESOLVING OR AVOIDING THEM.

2. BACKGROUND: AS NOTED BY PAUL BOEKER IN CONTACTS LAST
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MONTH WITH THE OECD SECRETARIAT (ELDIN AND BERTRAND),

RECENT DEVELOPMENTS AS WELL AS SECRETARIAT WORKING METHODS HAVE TENDED TO COMPLICATE RATHER THAN ADVANCE THE TIMELY NEGOTIATION OF A SATISFACTORY INVESTMENT PACKAGE. THE PROBLEMS RAISED BY THE LAST SERIES OF DOCUMENTS ISSUED BY THE SECRETARIAT AFTER THE CIME MEETING OF JANUARY 28-29 CONTAINING AS THEY DID SEVERAL NEW AND DIFFICULT ELEMENTS FOR THE U.S. (AS OBSERVED REFTELS C AND D), TOOK MUCH TIME AND EFFORT TO DEFUSE. AT BEST, AFTER THE LAST CIME DRAFTING GROUP (REFTEL A) THE INVESTMENT EXERCISE HAS BEEN PUT BACK ON THE TRACK WHERE IT APPARENTLY STOOD A MONTH AGO. APART FROM THE PANDORA'S BOX QUESTION OF WHAT NEW IDEAS MAY STILL BE RAISED BY THOSE OECD COUNTRIES THAT ARE ONLY NOW BEGINNING A SERIOUS POLICY EXAMINATION OF THE INVESTMENT EXERCISE, SEVERAL IMPORTANT ISSUES ARE STILL OUTSTANDING AND NEED TO BE RESOLVED. SECRETARIAT (BERTRAND) ON RELATIVELY OPTIMISTIC ASSUMPTIONS ASSESSES THE SITUATION AFTER THE LAST DRAFTING GROUP MEETING AS FOLLOWS: LARGEST PROBLEMS REMAIN WITH INCENTIVES/ DISINCENTIVES (WHERE CONFUSION IN EVIDENCE IN JANUARY REMAINS), WITH "CHAPEAU" TO THE ENTIRE PACKAGE (WHICH IS CURRENTLY BEING REWRITTEN BY VOGELAAR) AND WITH DISCLOSURE OF INFORMATION SECTION OF MNE GUIDELINES. BERTRAND BELIEVES MNE GUIDELINES-ASSOCIATED CONSULTATIONS NO LONGER PRESENT SERIOUS PROBLEMS, IF COMPROMISE AS DESCRIBED REFTEL A PROVES ACCEPTABLE. NATIONAL TREATMENT TEXT APPEARS VIRTUALLY COMPLETED.

3. NEED FOR AN IMPROVED NEGOTIATING PROCESS: IF THE INVESTMENT PROJECT IS TO BE COMPLETED IN GOOD TIME, A MORE DELIBERATE, DISCIPLINED AND SYSTEMATIC APPROACH SEEMS REQUIRED. IN ADDITION TO ATTEMPTING TO AVOID PITFALLS RESULTING FROM THE SECRETARIAT'S FREE-WHEELING INTERPRETATIONS OF ITS MANDATE, A METHOD NEEDS TO BE ADOPTED WHICH WILL FORCE COUNTRIES TO ENGAGE IN A SYSTEMATIC NARROWING-DOWN OF UNRESOLVED PROBLEMS, WHICH WILL PERMIT THEM TO CONCENTRATE ON THE REMAINING ISSUES, AND WHICH WILL FOSTER A POLITICAL PROCESS TO SETTLE THE FINAL DIFFICULT QUESTIONS. ELEMENTS WHICH THE MISSION BELIEVES MAY BE USEFUL IN PROMOTING THIS KIND OF PROCESS ARE DISCUSSED IN THE SUCCEEDING PARAGRAPHS.

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4.. CONTROL ON DOCUMENTATION: AS A FIRST SUGGESTION, THE MISSION BELIEVES THAT ALL NEW CIME DOCUMENTS CONTAINING ANY NEW SUBSTANTIVE OUTPUT BY THE SECRETARIAT SHOULD FIRST BE CLEARED BY THE CIME CHAIRMAN, FRAU STEEG. AS THIS EXERCISE NEARS ITS END, CENTRALIZED AND POLITICALLY RESPONSIBLE LEADERSHIP WILL BE NECESSARY TO INSURE THAT THE FEW ALTERNATIVES FOR FINAL COMPROMISE ARE CLEARLY PRESENTED IN DOCUMENTS TO CIME PLENARY. IN ADDITION, WHEREVER FURTHER SIGNIFICANT NEGOTIATION TAKES PLACE, AN EFFORT MUST BE MADE TO PROVIDE BETTER INSTRUCTIONS (PERHAPS EVEN IN WRITING) TO THE SECRETARIAT ON THE KINDS OF TEXTS AND DOCUMENTS THAT NEED TO BE PRODUCED BETWEEN CIME MEETINGS.

5. WE ALSO BELIEVE IT WOULD BE USEFUL TO LIMIT NEW CHANGES TO DOCUMENTS REPRESENTING THE INVESTMENT PACKAGE. AS EVIDENCED IN THE LAST DRAFTING GROUP (REFTEL A), MANY DELEGATIONS WHICH HAD NOT BEEN PREVIOUSLY ACTIVE IN INVESTMENT EXERCISE ARE NOW EXPRESSING THEIR LAST-MINUTE
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INTEREST BY INTRODUCING RELATIVELY MINOR, YET TROUBLE-SOME, DRAFTING CHANGES TO PARTS OF THE DOCUMENTS WHICH HAD ALREADY RECEIVED GENERAL AGREEMENT EITHER IN CIME PLENARY OR IN THE DRAFTING GROUP. A FIRM CUT-OFF DATE FOR DRAFTING CHANGES SHOULD BE AGREED UPON AT THE NEXT CIME.

6. TERMINATION OF DRAFTING GROUP: THE MISSION BELIEVES THAT WORK HAS NOW REACHED THE STAGE WHERE IT IS USEFUL TO CONSIDER THE TERMINATION OF THE CIME DRAFTING GROUP. ITS LATEST SESSION (REFTEL A) TURNED OUT TO BE A "HOLDING ACTION" TO LIMIT DAMAGE FROM THE LAST SET OF SECRETARIAT DOCUMENTS PREPARED FOR THE DRAFTING GROUP. IN CONTINUING TO SEEK GREATER DISCIPLINE OVER OECD SECRETARIAT, IT WOULD SEEM PRUDENT TO CONCENTRATE MORE WORK IN THE CIME PLENARY ITSELF, WHERE THE CHAIRMAN IS PRESENT, AND -- WHEN AN INFORMAL PROCESS OF NEGOTIATION AND ACCOMMODATION SEEMS APPROPRIATE -- IN THE "BONN GROUP" OR SOME VARIATION THEREOF WHICH BRINGS TOGETHER THE MOST ACTIVE AND REPRESENTATIVE DELEGATIONS.

7. ROLE OF "BONN GROUP:" FURTHER, FLEXIBLE USE OF THE "BONN GROUP" SEEMS WORTH CONSIDERING. WHILE THIS FORUM HAS LIMITATIONS IN THAT IT DOES NOT TAKE IN ALL THE IMPORTANT INTERESTS (E.G. FRANCE), IT DOES BRING TOGETHER THE COUNTRIES MOST ACTIVELY INTERESTED (FOR VARIOUS MOTIVES) IN THE SUCCESSFUL COMPLETION OF THE EXERCISE. IF THE "BONN GROUP" IS CONTINUED, MISSION BELIEVES IT MAY BE USEFUL TO CONSIDER INCLUDING THE JAPANESE, ALTHOUGH THEIR REPRESENTATION WOULD PROBABLY COME FROM PARIS (KATAYAMA) RATHER THAN TOKYO.

8. QUESTION OF CANADA AND AUSTRALIA: THERE IS THE SEPARATE, BUT RELATED QUESTION OF THE ULTIMATE ACCESSION OF CANADA, AUSTRALIA (AND NEW ZEALAND) TO THE INVESTMENT PACKAGE, ASSUMING THEY WILL NOT BE PERMITTED TO JOIN "A LA CARTE". THE JAPANESE OECD DELEGATION HAS BEEN IN TOUCH WITH MISSION REGARDING PROBLEM WHICH THESE AFOREMENTIONED COUNTRIES MAY HAVE WITH THE NATIONAL TREATMENT PORTION OF THE PACKAGE. JAPANESE SUGGEST THAT BILATERAL COORDINATED APPROACHES BE SET IN MOTION, EITHER INDIVIDUALLY OR WITH A SPOKESMAN (E.G. U.K., IN THE CASE OF AUSTRALIA) IN ORDER TO INDUCE THESE COUNTRIES TO JOIN THE WHOLE PACKAGE. ACCORDING TO JAPANESE DELEGATION, FRG HAS EXPRESSED AN INTEREST IN THIS APPROACH WITH REGARD TO CANADA, LESS SO WITH REGARD TO AUSTRALIA. (JAPANESE, OF COURSE, ARE ALSO INTERESTED IN AUSTRALIA.) IT IS NOT CLEAR TO MISSION WHETHER THIS APPROACH ORI-

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VIDUALLY OR WITH A SPOKESMAN (E.G. U.K., IN THE CASE OF AUSTRALIA) IN ORDER TO INDUCE THESE COUNTRIES TO JOIN THE WHOLE PACKAGE. ACCORDING TO JAPANESE DELEGATION, FRG HAS EXPRESSED AN INTEREST IN THIS APPROACH WITH REGARD TO CANADA, LESS SO WITH REGARD TO AUSTRALIA. (JAPANESE, OF COURSE, ARE ALSO INTERESTED IN AUSTRALIA.) IT IS NOT CLEAR TO MISSION WHETHER THIS APPROACH ORI-

GINATED FROM TOKYO OR FROM LOCAL JAPANESE REPRESENTATIVE. MISSION RESPONDED IT WOULD PASS ON SUGGESTION TO WASHINGTON. /WE SAID WE ASSUMED JAPANESE INITIATIVE WOULD BE PREMATURE UNTIL IT BECAME CLEAR THAT ALL OTHER OECD COUNTRIES ARE PREPARED TO ACCEPT THE WHOLE INVESTMENT PACKAGE. (FYI: IN A RECENT INFORMAL CONVERSATION, CANADIAN CIME DEL HALLIDAY INDICATED CANADIAN ATTITUDES TOWARD NATIONAL TREATMENT DOCUMENT WERE NOT QUITE AS NEGATIVE AS HE HAD PREVIOUSLY ASSUMED, AND HE NOW THOUGHT THERE WAS A 50-50 CHANCE OF CANADIAN APPROVAL.)

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9. OTHER BILATERAL CONTACTS: BILATERAL DISCUSSIONS ON OTHER POLITICALLY TROUBLESOME ISSUES MAY OF COURSE ALSO BE INDICATED, SUCH AS ON INCENTIVES/DISINCENTIVES ON WHICH FRENCH APPEAR TO BE TAKING ADAMANT STANCE.

10. RECOMMENDATION: IN SHORT, THE ELEMENTS OF A MORE COHERENT NEGOTIATING PROCESS SUGGESTED BY THE MISSION

INCLUDE IMPROVED OVERALL DIRECTION BY THE CIME CHAIRMAN, AND BETTER DISCIPLINE BY THE CHAIRMAN OVER THE ACTIVITIES OF THE OECD SECRETARIAT, AN EARLY TERMINATION OF THE CIME DRAFTING GROUP, CONCENTRATING THE NEGOTIATIONS IN THE CIME PLENARY, AND AUGMENTING THEM BY FLEXIBLE USE OF THE "BONN GROUP", AND OF APPROPRIATE BILATERAL CONTACTS WHEN THE EXERCISE REQUIRES POLITICAL IMPETUS. WE RECOMMEND THAT CONSIDERATION BE GIVEN TO ADOPTING THIS KIND OF APPROACH AND OF SEEKING TO PERSUADE FRAN STEEG (AND PROBABLY OTHER MEMBERS OF THE "BONN GROUP") TO IMPLEMENT IT, AS A MEANS OF HELPING TO ENSURE A SMOOTH COMPLETION OF THE OECD INVESTMENT

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PACKAGE FOR THE MINISTERIAL MEETING. IF THESE IDEAS HAVE MERIT, IT WOULD BE USEFUL FOR THE U.S. TO DISCUSS THEM PRIVATELY WITH CHAIRMAN STEEG BEFORE OR AT THE TIME OF NEXT CIME PLENARY IN MARCH. MISSION WOULD ALSO APPRECIATE GUIDANCE AS TO WHAT RESPONSE TO GIVE TO JAPANESE DELEGATION TO THEIR SUGGESTION DESCRIBED IN PARA 8.

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